IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4978 of 2001

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NANDLAL BAVANJIBHAI POSIYA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4978 of 2001

MR ANSHIN H DESAI for Petitioner No. 1

MR VM PANCHOLI, AGP for Respondent No. 1-3

MR BM MANGUKIYA for Respondent No. 4

RULE SERVED for Respondent No. 5

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 18/09/2001

ORAL JUDGEMENT

#. The petitioner before this Court is the Director of

Agricultural Produce Market Committee and has questioned the continuance of the respondent no.4 as the member of the said Committee nominated by the Local Authority, the Dolatpura Gram Panchayat.

#. It is the case of the petitioner that the term of the Dolatpura Gram Panchayat has been completed and the respondent no.4 who had been nominated by the Dolatpura Gram Panchayat can not be continued as the member of the Market Committee after the term of the Panchayat has expired.

#. Mr.Desai has submitted that the nomination of a member by the Local Authority shall be co-extensive with the term of the Local Authority, and such nomination can not be continued after the expiry of the term of the Local Authority. In support of this contention, he has relied upon the judgment of this Court in the matter of PATEL JAYANTILAL PURSHOTTAMDAS v/s. DIRECTOR OF AGRICULTURE MARKETING AND RURAL FINANCE [Special Civil Application No.1353 of 2001 decided on 20th June, 2001 Coram : Mr.Justice Pradip Kumar Sarkar]. In the similar facts of the matter, this Court has held that, "the petitioner has ceased to be a Councillor on 6th January, 2000 when his term as Councillor came to an end. Thereafter, the Administrator did not appoint him to represent the Nagar Palika as a member in the Market Committee. Further, the newly elected committee, after assumption of power, did not nominate the petitioner as a member of the Unjah Market Committee and therefore the continuance of petitioner as a member of the Market Committee can not be said to be legal after 6th January, 2000." The Court further held that, "the term of a nominated member of a Nagar Palika must be co-extensive with the term of the Nagar Palika and not with the term of the Market Committee where he was nominated by the Nagar Palika."

#. In the present case, it is an admitted fact that the term of the Dolatpura Gram Panchayat has been completed as alleged. Mr.Mangukiya, however, has relied upon proviso to Clause (4) of Sub-Section (1) of Section 11 of the Gujarat Agricultural Produce Markets Act, 1963 [hereinafter referred to as 'the Act'] and has submitted that on taking over the administration of the Gram Panchayat the petitioner can be nominated by the Administrator. In fact, the petitioner has been nominated by the Administrator (respondent no.5) and thus, the petitioner's continuance as a nominated member of the Dolatpura Gram Panchayat is legal and valid.

#. In view of the above referred admitted facts that the term of the Dolatpura Gram Panchayat has been completed and that the respondent no.4 was nominated by the erstwhile Dolatpura Gram Panchayat the respondent no.4 can not continue as the nominated member of the Market Committee. The nomination of the membership of the respondent no.4 shall be co-extensive with the term of the Dolatpura Gram Panchayat. On expiry of the term of the Dolatpura Gram Panchayat the membership of the respondent no.4 shall also expire.

#. In view of the above discussions, the petition is allowed. It is declared that the continuance of the respondent no.4 as a nominated member of the Agricultural Produce Market Committee, Junagadh, after the expiry of the term of the Dolatpura Gram Panchayat (i.e. 11th July, 2000), is contrary to Section 11 of the Act and is bad and illegal. Rule is made absolute. The parties shall bear their own costs.

#. It is clarified that I do not deal with the contention of Mr.Mangukiya that he has been nominated as the member of the said Committee by the Administrator of the Dolatpura Gram Panchayat under the Resolution dated 9th July, 2001.

(Ms. R.M.Doshit, J.)
/sakkaf